

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 600 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

JERAM MULCHAND CHANDANI

Versus

DINESH HIRANAND RAMNANI

Appearance:

MR MB GANDHI for Petitioner

MR CL SONI for Respondent No. 1, 2, 3, 4, 5, 6, 7

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 29/02/2000

ORAL JUDGEMENT

1. The appellant who is the original defendant no.1 in Special Civil Suit No.39 of 1996 pending in the Court of learned Civil Judge, Senior Division, Gandhidham has filed this Appeal From Order against the common order dated 22.9.1999 passed below Ex. 44,86 and 73.

2. The application Ex. 44 was under Order 39 Rule 2-A of the Civil Procedure Code whereby the appellant prayed to restore the possession of the suit shop no.1 to him and to restrain from interfering or disturbing his possession and to punish the respondents in accordance with law. Ex. 86 was filed by the present respondents no. 4 to 7 praying to delete them as they are not parties to the suit and, therefore, they are not concerned with the dispute between the parties.

3. Ex. 73 is filed by the appellant seeking amendment of changing date from 24.11.1997 to 24.11.1996 as according to the appellant, the said mistake is a clerical mistake and was made due to inadvertence. The learned trial judge rejected the said application on the ground that in view of the order passed below Ex. 44, Ex. 73 has become redundant. Thus, we are mainly concerned with Ex.44.

4. In order to appreciate the dispute between the parties, it is necessary to give certain facts.

The respondents no. 1 to 3 filed a suit being Special Civil Suit No. 39 of 1996 on 9.5.1996 in the Court of learned Civil Judge, Senior Division, Gandhidham against the appellant- defendant for specific performance of the sale agreement which is alleged to have been executed between the parties in May 1996. The respondents- original plaintiffs filed an application Ex. 9 on August 16, 1996 praying for a direction to the appellant to maintain status quo. This application was heard on August 27, 1996 wherein the Court passed an order directing the appellant to maintain status quo with respect to the disputed plot till the next date of hearing i.e. September 19, 1996. On August 29, 1996, the appellant applied to the Court for a direction to prepare a panchanama regarding the possession of the disputed offices and shops vide Ex. 14. The trial court, on August 30, 1996, granted the said application directing the Court Commissioner to prepare the panchanama regarding the possession of the disputed offices and shops. The Commissioner, on 31st August 1996, prepared the panchanama and found that in the suit property, in plot no. 292, the appellant is in possession of shop no.1. It was also found that the appellant as well as his power of attorney holder were also present. It is not in dispute that the order of status quo granted by the trial court was extended from time to time as per the request made by the respondents no. 1 to 3. Vide Ex. 41, the respondent no.1 applied for extension of the

order of status quo on 20th November 1997 and the Court, on the same day, passed an order extending the order of status quo till the next date. It is the case of the appellant that on 22nd November 1996, when he was sitting in his shop and getting the shop cleaned by his persons, the present respondents no. 4 to 7, with other persons, entered into the shop, pushed the appellant and his persons out of the shop forcibly and thereafter the respondents no. 4 and 5 kept their goods inside the shop and locked the shop. They also caused injuries to the appellant and his persons. It is the further case of the appellant that with respect to the said incident, he also lodged a criminal complaint against the present respondents no. 4 to 7. The appellant, on 29th April 1999, filed an application Ex. 73 before the trial court and pointed out that due to typing mistake, the date of dispossession i.e. 22nd November 1996 was wrongly mentioned as 22nd November 1997. The appellant, therefore, filed an application Ex. 44 under Order 39 Rule 2-A of the Civil Procedure Code inter alia contending that in spite of the order of status quo passed by the Court, he has been dispossessed and, therefore, prayed for restoration of the suit shop and to punish the respondents in accordance with law.

4. The respondents no. 1 to 5 filed reply to the said application Ex. 47 denying the allegations made by the appellant. They have contended that as per the order passed by the trial court, the appellant was directed to maintain status quo of the suit shop and, therefore, there is no question of committing breach of the order passed by the trial court. The respondents no. 4 to 7 have filed their reply at Ex. 60 inter alia contending that as they are not party in the suit, they have no relations with the respondents no. 1 to 3. They have denied having committed any act of dispossessing the appellant on 22nd November 1996. According to them, they have been given possession of the suit shop by one Mahesh Chelani and his wife Savitri Chelani on goodwill, who were carrying on the business in the suit shop in the name of Prashant Fancy Stores. They have further pointed out that the application is filed after the lapse of one year and two days and, therefore, the same is required to be rejected also on the ground of delay. The said respondents also filed application Ex. 86 for deleting their names under Order 1 Rule 10 from Ex. 44.

5. The learned trial judge, after hearing the parties, by his common order dated 22nd September 1999, passed the order on all the applications referred to above.

6. This Court, initially on December 2, 1999, issued notices to the respondents and made them returnable on December 13, 1999. On January 20, 2000, when the matter came up before me, after hearing the parties, prima facie, I found substance in the submissions of the learned Counsel for the appellant that the respondents and more particularly, the respondent no.4 has committed breach of the order of the trial court in a high handed manner by forcibly taking possession of the suit shop when the suit was pending. I issued Rule in the matter and fixed hearing on February 20, 2000. The respondents have filed their reply by way of affidavit which is taken on record and today the matter is finally heard.

7. After having heard the learned Counsel appearing for the respective parties at length, the following facts emerge which are not in dispute.

When the suit for specific performance was filed by the respondents no. 1 to 3 against the appellant, admittedly the appellant was in possession of the suit shop. His possession of the suit shop was found as per the report of the Court Commissioner dated 31.8.1996. It is also not in dispute that the Court had directed the appellant to maintain status quo with respect to the suit property, namely not to alienate or transfer or create third party's rights. This would on the contrary go to suggest that the appellant was in possession of the suit shop. It is also necessary at this stage to give details about the relationship of the parties. Even though the respondent no.4- Ajit Hiranand Ramnani, in his reply Ex. 60, has denied his relations with the respondents no. 1 to 3, the fact remains that he is the brother of the respondent no.1 and husband of the respondent no.3. It is not in dispute that the respondent no.2 is the wife of the respondent no.1. The respondents no. 1 to 3 being the original plaintiffs filed the suit for specific performance against the appellant and for any reason, not joined other respondents including the respondent no.4. Once the Court directed the appellant to maintain status quo with respect to the suit shop, the consequences would follow that he has to retain the possession of the suit shop till the disposal of the suit. It would also follow that nobody is entitled to commit the breach of the order of the Court by disturbing the possession of the appellant. There is no dispute with regard to the fact that the respondent no.4 is in possession of the suit shop since 22.11.1997 when the order of status quo was in operation. It is, however, the case of the respondent no.4 that he is in possession of the suit shop through

Mahesh Chelani and his wife Savitri Chelani who were running Prashant Fancy Stores and they have transferred the possession on goodwill to the respondent no.4. In order to substantiate his claim, the respondent no.4 has not produced any document of transfer of the suit shop by the said couple in his favour. The respondent no.4 has not produced any receipt of consideration having been paid by him for effecting the transfer of the suit property in his favour. On the contrary, the appellant has filed the affidavit of Smt. Savitri Mahesh Chelani before the trial court wherein she has in no uncertain terms stated that Shri Jeram M.Chandani, the appellant herein has never given her the possession of shop no.1 in R.K.Chambers, Plot No. 292, Ward No. 12/B at Gandhidham Kutch. She has further stated that she was never in possession of the said shop no.1 and had never taken the said shop on rent from said Jeram Chandani and, therefore, the question of handing over the possession of the said shop to anybody does not arise at all. She has further stated that she was never running the business in the said shop no.1 and had never given possession of the said shop to Ajit H. Ramnani, the respondent no.4 herein nor has she sold any business in the name of Prashant Fancy Stores, along with goodwill to the respondent no.4 by taking any consideration. This affidavit of Smt. Savitri Chelani completely destroys the case put forth by the respondent no.4. In this view of the matter, the case of the appellant that he was forcibly removed by the respondent no.4 on 22nd November 1997 appears to be quite genuine and believable. The contention of the respondent no.4 and other respondents, namely respondents no. 5 to 7 that they were not the parties to the suit and they have no relation with the respondents no. 1 to 3 will be of no assistance to them. It is reasonable to infer that they are in know of the proceedings initiated by the original plaintiffs i.e. respondents no. 1 to 3. Since the respondents no. 1 to 3 have filed the present suit for specific performance of the suit shop, without waiting for the outcome of the suit, the other respondents and more particularly the respondent no.4, by taking law in their hand, took forcible possession of the suit shop and have, thus, committed breach of the order passed by the trial court.

8. Order 39 Rule 2-A of the Civil Procedure Code which deals with the consequences of disobedience of any injunction granted or other order made under Rule 1 or Rule 2 or breach of any of the terms on which the injunction was granted or the order of the Court granting injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property

of the person guilty of such disobedience or breach, to be attached and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime, the Court directs his release. In view of the said provisions, the Court is entitled to deal with any person who commits the breach of the order as provided therein. The use of word "person" in the said provision instead of 'parties to the proceedings' would clearly go to suggest that the Court is entitled to deal with anybody who, according to the Court, is liable to be dealt with having committed the breach of the order passed by the Court. In this view of the matter, I am not at all impressed with the submission of the learned Counsel for the respondents that the other respondents, more particularly the respondent no.4 cannot be held liable for committing breach of the order of the Court as he was not the party to the proceedings. If the contention of the learned Counsel for the respondents is accepted, in that event, the orders of the Court will become redundant and no Court will be able to take any action against the third party that may be engaged by the parties to the proceedings.

9. Mr.Soni next contended that the present Appeal From Order challenging the combined order passed below Ex. 44, 86 and 73 is not maintainable. In the submission of Mr. Soni, Ex. 86 is the application filed by the respondents no. 4 to 7 praying for deletion of their names and the application Ex. 73 is for amendment i.e. for changing the date of dispossession, by the appellant. Mr. Soni submitted that against the order allowing Ex. 86 and 73, Appeal From Order is not maintainable and revision would lie and since this Court is not entrusted with the business of hearing of Civil Revision Application, no order can be passed. This submission is recorded for the purpose of rejection. As observed earlier, the respondents no. 4 to 7 and more particularly the respondent no.4 is admittedly in possession of the suit shop without there being any lawful title in his favour. The learned trial judge allowed the application Ex. 86 only on the ground that they were not the parties in the suit and, therefore, the appellant could have filed a separate suit. In view of what is held by me earlier, the Court can certainly deal with anybody while exercising powers under Order 39 Rule 2-A for the breach of the order of the Court. The trial court prima facie could not have deleted the names of the respondents no. 4 to 7. Thus, while accepting the contention of Mr. Soni that the appellant could have filed Civil Revision Application against the order granting Ex.86, while allowing the application Ex. 44

filed by the appellant, I hold that the respondents no. 4 to 7 and more particularly the respondent no.4 is liable to be dealt with under Order 39 Rule 2-A of the Civil Procedure Code. The learned trial judge rejected the application for amendment of the date from 22nd November 1996 to 22nd November 1997 holding that in view of the order passed below Ex. 44, Ex. 73 has become redundant. In my opinion, the said reasoning is no reasoning at all for the simple reason that it is a matter of record of the Court from where it could have been ascertained as to whether the appellant in fact made an application on 22nd November 1996 or 22nd November 1997. The fact that the appellant at the same time filed a criminal complaint with respect to the dispossession by respondents no. 4 to 7 would go to suggest that the appellant was in fact dispossessed on 22nd November 1997. The learned trial judge could have granted the application for changing date as the amendment was too minor and could not have caused any prejudice to the respondents. In any case, it is an undisputed fact that the respondent no.4 is in possession of the suit shop since 22nd November 1997. It is in fact the case of the appellant and, therefore, I fail to understand as to why the amendment as prayed for is refused. If the date 22nd November 1997 is accepted on which date the appellant was dispossessed, there is no delay on the part of the appellant in filing Ex. 44 as held by the learned trial judge. Admittedly, application Ex. 44 was filed on 24th November 1997 and, therefore, there is no delay on the part of the appellant in approaching the Court.

10. Mr. Soni, except raising technical contentions, is unable to explain as to how the respondent no.4 is occupying the suit shop since 22nd November 1997. In my opinion, the technical contentions raised on behalf of the respondent no.4 will not come in the way of the appellant once it is held that nobody has any right to take law in his own hands during the pendency of the suit. Suffice it to say that the Court inherent powers even to direct the third party to remove such obstructions in the enjoyment of right of the parties to the suit.

11. In view of the aforesaid discussion, this Appeal From Order is allowed. The respondent no.4 is directed to restore back the possession of the suit shop no.1 in R.K.Chambers, Plot No. 292, Ward No.12/B, at Gandhidham Kutch, within four weeks from the date of receipt of writ of this order failing which the appellant will be entitled to take possession of the suit shop with the help of the police. The concerned officer of Gandhidham

Police Station shall provide all help to the appellant for taking the possession of the suit shop from respondent no.4. The respondent no.4 is directed not to transfer or alienate the suit shop in favour of anybody till the possession is restored to the appellant. In this view of the matter, the order passed by the learned trial judge below Ex. 44 is set aside.

In view of what is discussed above, no order with respect to the order below Ex. 86. However, application Ex. 73 is granted.

Appeal From Order is accordingly allowed with costs quantified at Rs. 5000/-(Rs. Five thousand only) to be borne by the respondent no.4 and to be paid to the appellant within four weeks from the date of this order.

Office to send yadi to Gandhidham Police Station.

Direct Service.

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